



6560-50-P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 52

[EPA-R04-OAR-2013-0173; FRL-9904-91-Region 4]

Air Quality Implementation Plan; Alabama; Attainment Plan
for the Troy Area 2008 Lead Nonattainment Area

AGENCY: Environmental Protection Agency (EPA).

ACTION: Final rule.

SUMMARY: The Environmental Protection Agency (EPA) is taking final action to approve a state implementation plan (SIP) revision, submitted by the State of Alabama through the Alabama Department of Environmental Management (ADEM), to EPA on November 9, 2012, for the purpose of providing for attainment of the 2008 Lead (Pb) National Ambient Air Quality Standards (NAAQS) in the Troy 2008 Lead nonattainment area (hereafter referred to as the “Troy Area” or “Area”). The Troy Area is comprised of a portion of Pike County in Alabama surrounding the Sanders Lead Company (hereafter referred to as “Sanders Lead”). EPA is taking final action to approve Alabama’s November 9, 2012 SIP submittal regarding the attainment plan based on Alabama’s attainment demonstration for the Troy Area. The attainment plan includes the base year emissions inventory requirements, an analysis of the reasonably available control technology (RACT) and reasonably available control measures (RACM) requirements, reasonable further progress (RFP) plan, modeling demonstration of lead attainment and contingency measures for the Troy Area. This action is being taken in accordance with Clean Air Act (CAA or Act).

DATES: This rule is effective [insert 30 days after date of publication in the Federal Register].

ADDRESSES: EPA has established a docket for this action under Docket Identification No.

EPA-R04-OAR-2013-0173. All documents in the docket are listed on the www.regulations.gov

Web site. Although listed in the index, some information is not publicly available, i.e.,

Confidential Business Information or other information whose disclosure is restricted by statute.

Certain other material, such as copyrighted material, is not placed on the Internet and will be

publicly available only in hard copy form. Publicly available docket materials are available

either electronically through www.regulations.gov or in hard copy at the Regulatory

Development Section, Air Planning Branch, Air, Pesticides and Toxics Management Division,

U.S. Environmental Protection Agency, Region 4, 61 Forsyth Street, SW, Atlanta, Georgia

30303-8960. EPA requests that if at all possible, you contact the person listed in the **FOR**

FURTHER INFORMATION CONTACT section to schedule your inspection. The Regional

Office's official hours of business are Monday through Friday, 8:30 a.m. to 4:30 p.m., excluding

federal holidays.

FOR FURTHER INFORMATION CONTACT: Zuri Farngalo, Regulatory Development

Section, Air Planning Branch, Air, Pesticides and Toxics Management Division, U.S.

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8960. Zuri Farngalo may be reached by phone at (404) 562-9152 or via electronic mail at

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I. What is the Background for this Action?

On November 12, 2008 (73 FR 66964), EPA revised the Lead NAAQS, lowering the level from 1.5 micrograms per cubic meter ($\mu\text{g}/\text{m}^3$) to $0.15 \mu\text{g}/\text{m}^3$ calculated over a 3-month rolling average. EPA established the NAAQS based on significant evidence and numerous health studies demonstrating that serious health effects are associated with exposures to lead emissions.

Following promulgation of a new or revised NAAQS, EPA is required by the CAA to designate areas throughout the United States as attaining or not attaining the NAAQS; this designation process is described in section 107(d)(1) of the CAA. On November 22, 2010 (75 FR 71033), EPA promulgated initial air quality designations for the 2008 Lead NAAQS, which became effective on December 31, 2010, based on air quality monitoring data for calendar years 2007 – 2009, where there was sufficient data to support a nonattainment designation. Designations for all remaining areas were completed on November 22, 2011 (76 FR 72097),

which became effective on December 31, 2011, based on air quality monitoring data for calendar years 2008 – 2010. Effective December 31, 2010, the Troy Area was designated as nonattainment for the 2008 Lead NAAQS. This designation triggered a requirement for Alabama to submit a SIP revision with a plan for how the Area would attain the 2008 Lead NAAQS, as expeditiously as practicable but no later than December 31, 2015.

EPA provided some guidance on attainment planning requirements for the Lead NAAQS in the November 2008 final rule promulgating the NAAQS.¹ In addition, in July 2011, EPA provided additional guidance and clarification in the form of a memorandum with questions and answers on Lead NAAQS implementation.² In April 2012, EPA also released the “SIP Toolkit - Attainment Demonstrations and Air Quality Modeling” (located at <http://www.epa.gov/air/lead/kitmodel.html>)³ with further guidance on air quality modeling for attainment demonstrations.

ADEM submitted its 2008 Lead NAAQS attainment SIP for the Troy Area on November 9, 2012, which included the base year emissions inventory and the attainment demonstration. EPA proposed to approve the Troy Area attainment SIP for the 2008 Lead NAAQS on September 6, 2013. EPA’s analysis of the submitted attainment demonstration included a review of the pollutant addressed, emissions inventory requirements, modeling, RACT and RACM requirements, RFP plan, and contingency measures for the Troy Area. Refer to EPA’s

¹ See 73 FR 66964. <http://www.epa.gov/air/lead/kitrules.html>

² Memorandum titled “2008 Lead (Pb) National Ambient Air Quality Standards (NAAQS) Implementation Questions and Answers” dated July 8, 2011, from Scott L. Mathias, Interim Director, Air Quality Policy Division.

³ <http://www.epa.gov/air/lead/kitrules.html>

September 6, 2013, proposed rulemaking for detailed rationale on EPA's analysis of the Troy area attainment demonstration.

II. What is the Action EPA is Taking?

EPA is taking final action to approve Alabama's SIP submittal for the Troy Area, as submitted through ADEM to EPA on November 9, 2012, for the purpose of demonstrating attainment of the 2008 Lead NAAQS. Alabama's lead attainment plan for the Troy Area includes a base year emissions inventory, a modeling demonstration of lead attainment, an analysis of RACM/RACT, a RFP plan, and contingency measures.

EPA has determined that Alabama's attainment plan for the 2008 Lead NAAQS for the Troy Area meets the applicable requirements of the CAA. Thus, EPA is taking final action to approve Alabama's attainment plan for the Troy Area. EPA's analysis for this final action is discussed in Section IV of EPA's September 6, 2013, proposed rulemaking.

III. Why is EPA Taking This Action?

EPA has determined that all the criteria for Alabama's lead attainment plan for the Troy Area have been met. EPA has determined that Alabama's November 9, 2012 SIP submission meets the applicable requirements of the CAA. Specifically, EPA is taking final action to approve Alabama's November 9, 2012 SIP submission, which includes the attainment demonstration, base year emissions inventory, RACM/RACT analysis, contingency measures and RFP plan.

IV. What are EPA's Responses to Comments for Alabama's November 9, 2012 SIP

Submission?

As mentioned above, the proposed rule to approve the attainment demonstration for the Troy Area was published on September 6, 2013. *See* 78 FR 58435. EPA received one comment in response to the proposed approval of Alabama's attainment demonstration. The Commenter, Sanders Lead, generally supported EPA's action but also requested that EPA provide a clarification regarding contingency measures.

Comment: The Commenter requests that EPA clarify that "attainment of the Pb NAAQS is not required until December 31, 2015, and the plan's requirement that Sanders employ certain contingency measures if any Pb NAAQS exceedance occurs after 2013, is not mandated by the Act." The Commenter further states that "while Sanders acknowledges the regulatory preference to adopt contingency measures in the event of an exceedance, employment of contingency measures may not be legally required by the Clean Air Act until December 31, 2015."

Response: The Commenter is pointing to a provision of the SIP submitted by Alabama that requires Sanders Lead to undertake certain measures in the event that an exceedance of the 2008 Pb NAAQS occurs after July 2013. In the Commenter's view, since the proposed (and final) rule establish that the attainment date for the Area is December 31, 2015, the SIP cannot require Sanders Lead to undertake such contingency measures before that date. It is true that CAA section 172(c)(9) provides that an attainment plan shall include contingency measures if the area fails to attain the NAAQS by the applicable attainment date. However, section 172(c)(9) also

provides that an attainment plan shall include contingency measures if an area fails to make reasonable further progress towards attainment by the attainment date. Moreover, CAA section 116 provides that nothing in the Act precludes the right of a State to adopt or enforce any requirement respecting the control or abatement of air pollution from stationary sources, provided that the requirement is no less stringent than required by the Act. Likewise, section 110(k)(3) provides that EPA shall approve a submittal if it meets all of the applicable requirements of the Act. Finally, CAA section 192(a) of the Act provides that the primary Pb NAAQS shall be attained as expeditiously as practicable.

The aforementioned multiple CAA statutory provisions evidence Congressional intent to achieve the health benefits of NAAQS attainment as expeditiously as practicable, and to approve and enforce State strategies that will achieve that goal. Therefore, EPA believes it is entirely appropriate and consistent with the Act to approve the portion of Alabama's SIP submittal which requires certain measures to be undertaken by Sanders Lead in the event an exceedance of the Lead NAAQS occurs after July 2013. Even assuming it is true that Alabama was not required to submit this provision as part of its attainment SIP, Alabama certainly was authorized to elect to submit the requirement, and EPA has no basis under the CAA to disapprove it.

V. Final Action

EPA is taking final action to approve Alabama's lead attainment plan for the Troy Area. EPA has determined that the SIP meets the applicable requirements of the CAA. Specifically, EPA is taking final action to approve Alabama's November 9, 2012, SIP submission, which

includes the attainment demonstration, base year emissions inventory, RACM/RACT analysis, contingency measures and RFP plan.

VI. Statutory and Executive Order Reviews

Under the CAA, the Administrator is required to approve a SIP submittal that complies with the provisions of the Act and applicable Federal regulations. 42 U.S.C. 7410(k); 40 CFR 52.02(a). Thus, in reviewing SIP submissions, EPA's role is to approve state choices, provided that they meet the criteria of the CAA. Accordingly, this action merely approves state law as meeting Federal requirements and does not impose additional requirements beyond those imposed by state law. For that reason, this action:

- is not a “significant regulatory action” subject to review by the Office of Management and Budget under Executive Order 12866 (58 FR 51735, October 4, 1993);
- does not impose an information collection burden under the provisions of the Paperwork Reduction Act (44 U.S.C. 3501 *et seq.*);
- is certified as not having a significant economic impact on a substantial number of small entities under the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*);
- does not contain any unfunded mandate or significantly or uniquely affect small governments, as described in the Unfunded Mandates Reform Act of 1995 (Public Law 104-4);
- does not have Federalism implications as specified in Executive Order 13132 (64 FR 43255, October 7, 1999);

- is not an economically significant regulatory action based on health or safety risks subject to Executive Order 13045 (62 FR 19885, April 23, 1997);
- is not a significant regulatory action subject to Executive Order 13211 (66 FR 28355, May 22, 2001);
- is not subject to requirements of Section 12(d) of the National Technology Transfer and Advancement Act of 1995 (15 U.S.C. 272 note) because application of those requirements would be inconsistent with the CAA; and
- does not provide EPA with the discretionary authority to address, as appropriate, disproportionate human health or environmental effects, using practicable and legally permissible methods, under Executive Order 12898 (59 FR 7629, February 16, 1994).

In addition, this rule does not have tribal implications as specified by Executive Order 13175 (65 FR 67249, November 9, 2000), because the SIP is not approved to apply in Indian country located in the State, and EPA notes that it will not impose substantial direct costs on tribal governments or preempt tribal law.

List of Subjects in 40 CFR Part 52

Environmental protection, Air pollution control, Incorporation by reference, Intergovernmental relations, Lead, Reporting and recordkeeping requirements.

Authority: 42 U.S.C. 7401 *et seq.*

Dated: December 18, 2013

Beverly H. Banister

Acting Regional Administrator,

Region 4.

40 CFR part 52 is amended as follows:

PART 52-APPROVAL AND PROMULGATION OF IMPLEMENTATION PLANS

1. The authority citation for part 52 continues to read as follows:

Authority: 42 U.S.C. 7401 *et seq.*

Subpart B - Alabama

2. Section 52.50(e) is amended by adding a new entry for “2008 Lead Attainment

Demonstration for Troy Area” at the end of the table to read as follows:

§ 52.50 Identification of plan.

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(e) * * *

EPA-Approved Alabama Non-Regulatory Provisions

Name of nonregulatory SIP provision	Applicable geographic or nonattainment area	State submittal date/effective date	EPA approval date	Explanation
**	**	**	*	
2008 Lead Attainment Demonstration for Troy Area	Troy Area	11/9/12	[Insert date of publication in <u>Federal Register</u>] [Insert citation of publication]	

[FR Doc. 2014-01500 Filed 01/27/2014 at 8:45 am; Publication Date: 01/28/2014]